

REMARKS

At the outset, the Examiner is thanked for the thorough review and consideration of the pending application. The non-final Office Action dated August 11, 2010 has been received and its contents carefully reviewed.

Claims 1-62 are currently pending. Reexamination and reconsideration of the pending claims is respectfully requested.

In the Office Action, claims 1-62 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over all claims of copending application no. 10/374,751. Applicant respectfully traverses.

Initially, Applicants respectfully note that MPEP 804 I B states that a provisional double patenting rejection should continue to be made by the examiner as long as there are conflicting claims in more than one application unless that provisional double patenting rejection is the only rejection remaining in at least one of the application. As the above provisional double patenting rejection is the only rejection remaining in the instant application, Applicant respectfully requests withdrawal of the provisional rejection.

Moreover, the Office Action states that “the prior application of ‘751 discloses that it is known to have recessed and non recessed portions and discontinuous and continuous patterns or topography or motifs.” However, such use of the disclosure of prior application ‘751 in a double patenting rejection is specifically prohibited. “When considering whether the invention defined in a claim of an application would have been an obvious variation of the invention defined in the claim of a patent, the disclosure of the patent may not be used as prior art.” MPEP 804 II.B.1

Accordingly, Applicant respectfully requests withdrawal of the provisional rejection of claims 1-62.

If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at (202) 496-7500 to

discuss the steps necessary for placing the application in condition for allowance. All correspondence should continue to be sent to the below-listed address.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to Deposit Account No. 50-0911.

Dated: February 10, 2011

Respectfully submitted,

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